



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tom Hoch Interior Designs, Inc.
File: B-224291
Date: September 18, 1986

DIGEST

1. Protest of alleged improprieties in an initial solicitation and improprieties subsequently incorporated into a solicitation is untimely if not filed prior to the respective closing dates for receipt of proposals.
2. An agency need not conduct a preaward survey of a firm not in line for award, since the survey is part of the evaluation of the prospective contractor's ability to perform.
3. GAO does not review affirmative determinations of responsibility in the absence of a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria were not applied.
4. GAO will not review whether a contractor actually complies with specifications during the performance of a contract because that is a matter of contract administration.

DECISION

Tom Hoch Interior Designs, Inc., protests the award of a contract to Carlisle Purchasing Corporation under request for proposals (RFP) No. DACA56-86-R-0020, issued by the Army Corps of Engineers for renovation of transient housing facilities at Fort Sill, Oklahoma. Tom Hoch questions the Army's deletion of a requirement for a performance bond; the agency's instructions first to include, and then to delete, sales tax in the calculation of proposal price; and its failure to conduct a preaward survey of the firm. Tom Hoch also asserts that Carlisle is not responsible since it is not an interior design firm and does not have a credit rating, and alleges that the Army will not receive goods of the quality required by the solicitation.

We dismiss the protest without receiving a report on the matter from the Army, since it is clear that the protest has no legal merit. See 4 C.F.R. § 21.3(f) (1986).

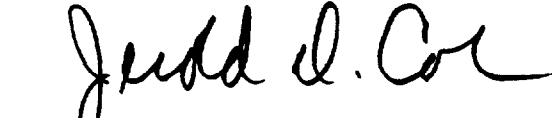

Our Bid Protest Regulations require that protests based upon alleged solicitation improprieties apparent prior to the closing date for the receipt of initial proposals be filed before that date, and that improprieties which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). According to the protester, the Army deleted the RFP's requirement for a performance bond before the initial closing date of August 14, and advised offerors, after initial submissions, to delete any sales tax from their offers in revised proposals to be submitted by August 26. Any objections to those requirements therefore should have been filed prior to the closing dates of August 14 and August 26, respectively. Tom Hoch did not file its protest until September 5, and the protest therefore is untimely as to those issues. University of Dayton Research Institute, B-220589, Jan. 30, 1986, 86-1 C.P.D. ¶ 108.

Concerning the fact that the Army did not conduct a preaward survey of Tom Hoch, such a survey is a part of the evaluation of the prospective contractor's ability to perform, not part of a comparative analysis of offerors' capabilities. See Federal Acquisition Regulation, 48 C.F.R. § 9.105-1 (1985). Since Tom Hoch was not in line for award, the Army did not have to conduct a survey regarding the firm.

Tom Hoch's remaining allegation concerns the Army's affirmative determination of Carlisle's responsibility, which is necessarily involved in any decision to award to Carlisle. Mann Rental Service, B-216868, Oct. 31, 1984, 84-2 C.P.D. ¶ 493. Affirmative determinations of responsibility involve business judgments by procuring officials as to a firm's capability and are not readily susceptible to reasoned review. Accordingly, we will not review an affirmative determination of responsibility unless the protester shows possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria included in the solicitation were not met. 4 C.F.R. § 21.3(f)(5). Neither exception applies here.

Finally, we will not review a protest alleging that a low bidder intends to perform a contract in a manner inconsistent with the specifications, since whether a contractor actually furnishes a product meeting specifications is a matter of contract administration, which is not part of our bid protest function. See Micro Research, Inc., B-221170.6, Mar. 17, 1986, 86-1 C.P.D. ¶ 26.

The protest is dismissed.


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